

DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
HEALTH SERVICES ADMINISTRATION
INDIAN HEALTH SERVICE
ROCKVILLE, MARYLAND

INDIAN HEALTH SERVICE CIRCULAR NO. 80-6

Reporting and Payment Requirements Under the
Federal Medical Care Recovery Act
"Third Party Tortfeasor Cases"

1. Purpose
2. Background
3. Policy

1. PURPOSE: The purpose of this memorandum is to establish and/or clarify a uniform policy in the Indian Health Service (IHS) for the reporting of third party tortfeasor cases to the proper Regional Attorney and for the payment of purchase orders issued for contract health services where a claim exists against an alleged third party tortfeasor.
2. BACKGROUND: Third party tortfeasor cases are cases where IHS provides or pays for services to an injured individual where a third party may be found to be responsible for the injury. Such a third party is referred to as a tortfeasor. Under the Federal Medical Care Recovery Act (FMCRA) the government is authorized to recover the cost of these services. The various Offices of the Regional Attorney are responsible for asserting any government claim under the FMCRA.

The Office of the General Counsel (OGC) has advised that the procedure of withholding payment on purchase orders pending resolutions of third party liability . . . does not follow the procedures for recovery under the Act
(FMCRA)

Therefore, any procedures or methods of operation which result in the withholding of payment for contract health services pending the determination of third party liability must be changed and the above policy fully and immediately implemented.

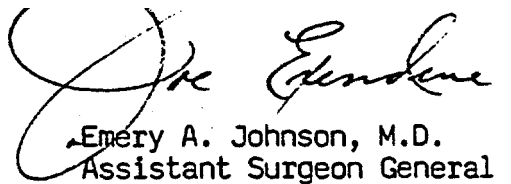
In addition, authorization of contract health services may not be denied based on any theory that potential recovery from an alleged third party tortfeasor constitutes an "alternate resource" under the contract health service regulations.

Any recovery made by the government must go to the Treasury rather than to reimburse the IHS appropriation. This may have the effect on your staff of reducing their motivation for reporting FMCRA cases to the Regional Attorney. Nevertheless, these reporting and payment requirements are mandatory and must be followed.

There is, however, a positive motivating factor that should be kept in mind. Failure to report FMCRA cases could possibly harm the patient or the patient's family. If the injured party should make a settlement that does not reflect the cost of services provided by IHS, the government might still have a claim against the settlement for the cost of services. Though it is problematic whether the government would push its claim in such a situation, the possibility cannot be ruled out. Therefore, prompt reporting can act to protect the interests of the injured party.

3. POLICY: All third party tortfeasor cases are to be promptly reported to Office of the Regional Attorney for the HHS region which services the IHS Area or Program Office unless other arrangements are worked out with the Office of the General Counsel (OGC). Also, all additional costs, including care in IHS hospitals and bills paid for third party cases, must be promptly reported.

Bills submitted to the IHS where contract health services have been authorized in a third party case must be paid if otherwise valid and funds are available. Payment is not to be withheld pending final determination of any claim the patient may have a third party.



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